

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM FEIL,
Plaintiff,
v.
C. SULLIVAN, *et al.*,
Defendants.

Case No. C05-5180RJB
ORDER ON PENDING MOTIONS

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The action has a somewhat strange procedural history that needs to be set forth to place this order in its proper context. Before the court are plaintiff's motion for summary judgment and plaintiff's motion to have the Untied States Marshals serve the action. (Dkt. # 4 and 13).

In March when this action was filed plaintiff moved for *in forma pauperis* status. (Dkt. # 1), While that motion was pending plaintiff paid approximately half the filing fee. (Dkt. Entry March 14th, 2005). Plaintiff was ordered to pay the remaining portion of the fee or file for *in forma pauperis* status. Plaintiff then moved for summary judgment despite the fact that no defendant had been served. (Dkt. # 4). Plaintiff then paid the remainder of the fee and cured his *in forma pauperis*

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1 application.

2 Despite the fact that plaintiff had paid the filing fee the court granted his motion and ordered
3 the United States Marshals to attempt service by mail. (Dkt. # 7 and 10). Plaintiff now files a
4 motion asking for service by United States Marshals. (Dkt. # 13).

5 The motion for summary judgment is premature. Defendants have yet to appear and have not
6 had an opportunity to answer the complaint or conduct discovery. The motion will not be
7 considered and the clerk is directed to remove the motion, (Dkt. # 4), from the courts calendar.
8 Plaintiff may re-note this motion at an appropriate point in the litigation.

9 The motion for service by Marshal is frivolous given that 11 days earlier the court entered an
10 order that the Marshal attempt service. The clerk is directed to also remove this motion from the
11 courts calendar.

12 The Clerk is directed to send a copy of this Order to plaintiff and to remove docket numbers
13 4 and 13 from the court's calendar.

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15 DATED this 18th day of May 2005.

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17 /S/ J. Kelley Arnold
18 J. Kelley Arnold
19 United States Magistrate Judge
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